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Attorneys for Plaintiffs, Operating Engineers'  
Health And Welfare Trust Fund for Northern California, et al.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH AND  
WELFARE TRUST FUND FOR NORTHERN  
CALIFORNIA; DAN REDING and JAMES E.  
MURRAY, Trustees;

PENSION TRUST FUND FOR OPERATING  
ENGINEERS; DAN REDING and JAMES E.  
MURRAY, Trustees;

PENSIONED OPERATING ENGINEERS'  
HEALTH AND WELFARE TRUST FUND; DAN  
REDING and JAMES E. MURRAY, Trustees;

OPERATING ENGINEERS AND PARTICIPATING  
EMPLOYERS PRE-APPRENTICE, APPRENTICE  
AND JOURNEYMEN AFFIRMATIVE ACTION  
TRAINING FUND; DAN REDING and JAMES E.  
MURRAY, Trustees;

OPERATING ENGINEERS LOCAL UNION NO. 3  
VACATION, HOLIDAY AND SICK PAY TRUST  
FUND; DAN REDING and JAMES E. MURRAY,  
Trustees;

HEAVY AND HIGHWAY COMMITTEE; and

OPERATING ENGINEERS LOCAL 3 OF THE  
INTERNATIONAL UNION OF OPERATING  
ENGINEERS, AFL-CIO,

Plaintiffs,

v.

PACIFIC COAST CONSTRUCTION SERVICES,

Case No.

**COMPLAINT**

INC., a California Corporation; DAVID  
BURKHART, an individual, BRENT BURKHART,  
an individual,

Defendants.

#### Parties

1. The Operating Engineers' Health and Welfare Trust Fund for Northern California (which includes the Addiction Recovery Program, Inc.) ("Health Fund"); Pension Trust Fund for Operating Engineers (which includes the Pension Plan for the Pension Trust Fund for Operating Engineers, the Rehabilitation Plan, and the Operating Engineers Annuity Plan) ("Pension Plan"); Pensioned Operating Engineers' Health and Welfare Trust Fund ("Pensioned Health Fund"); Operating Engineers and Participating Employers Pre-apprentice, Apprentice and Journeymen Affirmative Action Training Fund ("Affirmative Action Training Fund"); and the Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund ("Vacation Fund") (collectively referred to hereinafter as the "Trust Funds"), are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). Dan Reding and James E. Murray are Co-Chairmen of the Joint Boards of Trustees of the Health Fund, Pension Fund, Pensioned Health Fund, and Affirmative Action Training Fund and have authority to act on behalf of all Trustees of those Funds. Dan Reding and James E. Murray are Co-Chairmen of the Joint Boards of Trustees of the Vacation Fund and have authority to act on behalf of all Trustees of the Vacation Fund. The Trust Funds and their fiduciaries are together referred to herein as "ERISA Plaintiffs" or "Plaintiffs."

2. The Heavy and Highway Committee is a Trust established under the Labor Management Relations Act ("LMRA"), 302(c)(9), 29 U.S.C. § 186(c)(9).

3. Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO ("Union") is a labor organization as defined in § 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 152(5), and is represented by counsel herein for the limited purpose of collecting union dues owing as part of the subject contribution claims of Plaintiffs, and not for any other cause of action. The Union expressly reserves its rights to pursue any other cause of action on its own behalf.

4. Pacific Coast Construction SVC, Inc., a California Corporation; David Burkhart, an

1 individual, and Brent Burkhart (“Defendants”) are employers by virtue of ERISA § 3(5), 29 U.S.C. §  
2 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

### 3 Jurisdiction

4 5. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of  
5 ERISA § 502, 29 U.S.C. § 1132, in that Plaintiffs seek to enforce the provisions of ERISA and the terms  
6 of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress  
7 such violations, and seek all other appropriate relief under ERISA.

8 6. Jurisdiction exists in this Court over all the claims by virtue of LMRA § 301, 29 U.S.C. §  
9 185, in that Plaintiffs seek to enforce the terms and conditions of a valid Bargaining Agreement.

10 7. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA,  
11 supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they  
12 arise out of a common nucleus of operative facts that form the basis of the federal claims asserted  
13 herein, each of which has a substantial ground in federal jurisdiction.

### 14 Venue

15 8. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an action  
16 is brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs’  
17 discretion, in the district where the plan is administered, where the breach took place, or where a  
18 defendant resides or may be found, and process may be served in any other district where a defendant  
19 resides or may be found. ERISA Plaintiffs’ Trust Funds are administered in this district at their principal  
20 place of business in Alameda, California. Thus, jurisdiction and venue are properly grounded with this  
21 Court.

22 9. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29 U.S.C. §  
23 185, as this Court has jurisdiction over the parties, as the Union maintains its principal place of business  
24 in this district, its duly authorized officers or agents are engaged in representing employee members in  
25 this district, and the claims arise in this district.

### 26 Intradistrict Assignment

27 10. The basis for assignment of this action to this Court’s Oakland Division is that all of the  
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1 events and omissions giving rise to Plaintiffs' claims occurred in the County of Alameda, where ERISA  
2 Plaintiffs' Funds and the Bargained Plans are administered, and where Defendants therefore failed to  
3 fulfill their statutory and contractual obligations to Plaintiffs.

4 Bargaining Agreements

5 11. Defendant David Burkhart, on behalf of Defendant Pacific Coast Construction Services,  
6 Inc. ("PCC") entered into the Independent Northern California Construction Agreement (the  
7 "Independent Agreement") with the Union, which incorporates the Master Agreement ("Master  
8 Agreement") between the Union and the Signatory Associations. Under the terms of the Independent  
9 Agreement, the principal shareholders of PCC personally guaranteed all amounts due by PCC under the  
10 terms of the Independent Agreement and Master Agreement. Plaintiffs are informed and believe that  
11 Defendants David Burkhart (who signed the Independent Agreement) and Brent Burkhart are the  
12 principal shareholders of PCC. As such, Plaintiffs allege that both Defendant David Burkhart and  
13 Defendant Brent Burkhart have personally guaranteed all amounts due herein. The Independent  
14 Agreement and Master Agreement are collectively referred to hereinafter as the "Bargaining  
15 Agreements." The Bargaining Agreements, which incorporate the terms of the Trust Agreements  
16 establishing the Trust Funds ("Trust Agreements"), require Defendants to provide employer  
17 contributions to Plaintiffs' Trust Funds, to the Union for union dues, and to the other plans more fully  
18 described in the Bargaining Agreements. ERISA Plaintiffs are third-party beneficiaries of the  
19 Bargaining Agreements.

20 12. Under the terms of the Bargaining Agreements and Trust Agreements incorporated  
21 therein, Defendants are required to pay certain contributions to the Construction Industry Force  
22 Account; Contract Administration Fund; Funding Improvement Plan; Operating Engineers Annuity  
23 Fund; Assistance & Recovery Program, Inc.; California Alliance for Jobs; Market Preservation Trust  
24 Fund; and Operating Engineers Industry Stabilization Trust Fund (together referred herein as "Bargained  
25 Plans"). Plaintiffs' Boards of Trustees are assigned under the Bargaining Agreements to receive and  
26 administer monies due to these Bargained Plans.

27 13. Under the Bargaining Agreements and Trust Agreements, which are incorporated into the  
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1 Bargaining Agreements and made binding on Defendants, Defendants are required to regularly pay to  
2 ERISA Plaintiffs, the Bargained Plans, and the Union, certain sums of money, the amounts of which are  
3 determined by the hours worked by Defendants' employees. Contributions are due on the fifteenth  
4 (15th) day of the month following the month in which hours were worked, and are considered  
5 delinquent if not received by the twenty-fifth (25th) day of that month. Defendants are also required,  
6 pursuant to the Bargaining and Trust Agreements, to pay liquidated damages in the amount of ten  
7 percent (10%) for each delinquent contribution relative to those owed pursuant to the Independent and  
8 Master Agreement, but in the amount of twenty percent (20%) for each delinquent contribution which is  
9 the subject of litigation. Moreover, the Bargaining and Trust Agreements provide that interest accrues  
10 on delinquent contributions at the rates reasonably set by the Trustees from the date they become  
11 delinquent, which is the twenty-sixth (26th) day of the month in which payment was due, until paid in  
12 full.

13 14. The Bargaining Agreements and Trust Agreements further require Defendants to  
14 maintain time records or time cards, and to permit an authorized Trust Fund representative to examine  
15 such records of Defendants as are necessary to determine whether Defendants have made full payment  
16 of all sums owed to ERISA Plaintiffs. Should an audit of Defendants' records reveal Defendants have  
17 failed to provide full and prompt payment of all sums due to Plaintiffs, Defendants must reimburse  
18 Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant to the  
19 Bargaining and Trust Agreements.

20 Factual Allegations

21 15. Defendants have failed to report and pay contributions for hours worked by their  
22 employees during the month of January 2019. Defendants also reported, but failed to pay contributions  
23 due for hours worked by their employees during the months of December 2018 and February through  
24 May 2019. Liquidated damages and interest are owed to Plaintiffs for the unpaid contributions for the  
25 above-referenced months, as well as late-paid contributions for the months of August 2017 through  
26 March 2018 and June 2018 through November 2018.

27 16. Plaintiffs are also entitled to recover any and all other contributions, and all liquidated  
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1 damages and interest on delinquent contributions not specified above, found due on timecards, audit, or  
2 otherwise, including estimated contributions for any months Defendants fail to report to Plaintiffs,  
3 through the time of Judgment. Plaintiffs reserve the right to conduct an audit to determine whether there  
4 are any additional amounts due from Defendants.

5  
6 **FIRST CAUSE OF ACTION**  
**For Payment of Delinquent Contributions, Interest, Liquidated Damages,**  
**Attorneys' Fees and Costs Against Defendants**

7 17. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 16, above.

8 18. Defendants have a contractual duty to timely pay the required contributions to Plaintiffs  
9 and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining Agreements  
10 and Trust Agreements. Defendants also have a contractual duty under the Bargaining Agreements, and  
11 Trust Agreements to permit an audit of their records to determine whether they are making full and  
12 prompt payment of all sums required to be paid by them to Plaintiffs, and to pay Plaintiffs all amounts  
13 found due as a result of an audit, including audit fees.

14 19. In addition, Defendants have a statutory duty to timely make the required payments to  
15 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

16 20. By failing to make the required payments to Plaintiffs, Defendants breached the  
17 Bargaining Agreements and Trust Agreements and is in violation of ERISA § 515, 29 U.S.C. § 1145,  
18 and LMRA § 301(a).

19 21. Defendants' failure and refusal to pay the required contributions was at all times, and still  
20 is, willful. Defendants continue to breach the Bargaining Agreements, and incorporated Trust  
21 Agreements by failing to pay all amounts owed as alleged. Said refusal is unjustified and done with  
22 knowledge and intent.

23 22. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and  
24 irreparable injury, loss and damage unless Defendants are ordered specifically to perform all obligations  
25 required on Defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29  
26 U.S.C. §§ 141-197, and the Bargaining Agreements and Trust Agreements, and are restrained from  
27 continuing to refuse to perform as required thereunder.  
28

23. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

24. This Complaint does not in any manner relate to statutory withdrawal liability that may or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any such withdrawal liability claims against Defendants as provided by ERISA Plaintiffs' Plan Documents, Trust Agreements, and the law.

#### Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For a judgment against Defendants as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendants fail to report to Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreements;

ii. To the Union in accordance with the Bargaining Agreements.

(b) Liquidated damages on all late-paid and unpaid contributions in an amount provided for under the Bargaining Agreements and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all late-paid and unpaid contributions at the rates set in accordance with the Bargaining Agreements the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132(g)(2)(B).

2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance with the Bargaining Agreements for all Bargained Plans; and with LMRA § 301, 29 U.S.C. § 185, for all

3. For an order,

(a) requiring that Defendants comply with their obligations to Plaintiffs under the

(b) enjoining Defendants from violating the terms of those documents and of ERISA;

(c) enjoining Defendants from disposing of any assets until said terms have been

5. For such other and further relief as the Court may deem just and proper.

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